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In the Matter of )  
)  
New Hampshire Public Utilities Commission's )  
Petition for Delegation of Additional Authority )  
to Implement Area Code Conservation Measures )  
In the 603 Area Code )

File No. NSD-L-99-71

CC Dkt. No. 96-98

**Reply Comments of  
Omnipoint Communications, Inc.**

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, respectfully submits its reply comments concerning the Petition by the New Hampshire Public Service Commission ("NHPUC") for additional numbering authority.<sup>1</sup>

**I. Granting the States Additional Numbering Authority  
On a Temporary Basis Would Be Both Inefficient and Disruptive**

Omnipoint agrees with the initial comments filed in this proceeding by AT&T Corp. ("AT&T"), The Cellular Telecommunications Industry Association ("CTIA"), Bell Atlantic, MCI WorldCom, Inc. ("MCI WorldCom"), MediaOne Group ("MediaOne"), The Personal Communications Industry Association ("PCIA"), SBC Communications Inc. ("SBC"), and the United States Telephone Association ("USTA") to the extent that they urge the rejection the NHPUC's petition. Omnipoint agrees with these parties that granting the NHPUC additional numbering authority even on an "interim" or temporary basis is wasteful, inefficient and disruptive, and will operate both to the detriment of

<sup>1</sup> The NHPUC seeks a waiver of Section 52.19(c)(3) of the Commission's rules, and requests the authority to: (1) implement interim unassigned number pooling; (2) implement mandatory thousand number block ("NXX code") pooling; (3) adopt interim number assignment standards; (4) enforce number assignment standards; (4) enforce number assignment standards, including auditing the use of numbering resources and reclaiming unused and reserved exchange codes; and (5) revise number rationing procedures, if necessary. See NHPUC Petition at 7-8.

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carriers and the public interest.<sup>2</sup> Moreover, granting the NHPUC additional numbering authority will also interfere with the Commission's long-term goals of maintaining a national, uniform numbering system. Instead of granting the NHPUC Petition and further compounding what Omnipoint regards as a serious policy mistake, Omnipoint urges the Commission to curtail this chain of decisions and delay delegating any additional numbering authority to the states until suitable national standards are in place.

As the Commission is well aware, the instant proceeding involves a series of national number administration and conservation matters that are already under consideration in CC Docket 99-200. As Omnipoint and many other parties have clearly shown in that rulemaking proceeding, it is essential that the Commission issue uniform, national conservation policies, ensure that these policies are implemented in a uniform, coordinated manner throughout the states, and thereby prevent the states from enacting a fragmented, chaotic patchwork of differing regulatory requirements and conservation experiments.<sup>3</sup> Omnipoint has repeatedly urged the Commission to suspend consideration of state requests for additional numbering authority -- such as those in the NHPUC Petition -- until the Commission has completed this rulemaking.

Omnipoint finds it intensely frustrating that despite this record, the Commission has nonetheless proceeded to grant the states of California, Florida, New York,

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<sup>2</sup> See AT&T Comments at 5-6; Bell Atlantic at 2; CTIA Comments at 2-5; MCI WorldCom Comments at 3-7; PCIA Comments at 2-7; SBC Comments at 2-3; USTA Comments at 2-4.

<sup>3</sup> See, e.g., Omnipoint Comments in CC Dkt. No. 99-200 at 2-5; see also Omnipoint Reply Comments in CC Dkt. 99-200 at 4. As Omnipoint has stressed repeatedly to the Commission, it is critical to the continued development of competitive markets that numbering issues be governed by uniform, national standards. A decentralized system of state-run allocation mechanisms and conservation measures works to the detriment of non-incumbent carriers and new market entrants, which are forced to spend large amounts of money, time and human capital simply to comply with the demands of individual state regulators and pry loose sufficient number resources to meet customer demand. Id.

Massachusetts, and Maine additional authority over number administration on an “interim” basis, pending the final outcome of its rulemaking, and may very well grant similar authority to the NHPUC in the instant proceeding. Omnipoint finds these delegations inexplicable since the Commission itself has acknowledged the serious administrative problems that may result from such delegations, and has also made clear that any “interim” measures taken by the states may soon be swept aside by the very national guidelines, standards, and procedures the Commission is currently developing in CC Docket 99-200.<sup>4</sup> Now Ohio has filed for a similar yet different set of delegations,<sup>5</sup> and unless the Commission takes immediate action to stem the tide, it can expect 40 more such applications in the immediate future. Responding to such individual requests is not an effective use of Omnipoint’s limited resources, nor does Omnipoint expect that it helps the Commission focus on development of critical national standards. Omnipoint also wonders how the Commission might evaluate the results of dozens of so-called trials when each will bear the stamp of only one state’s proprietary interests.

Omnipoint stresses that the state-by-state patchwork of numbering policies that is emerging from the Commission’s state delegations will be highly inefficient, and can

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<sup>4</sup> See, e.g., In the Matter of Maine Public Utilities Commission Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Dkt. No. 96-98, NSD Dkt. No. L-99-27, Order, at ¶¶ 13-16 (rel. Sept. 28, 1999).

<sup>5</sup> See Public Utilities Commission of Ohio Emergency Petition for Additional Delegated Authority to Implement Number Conservation Measures, NSD File No. L-97-42 (filed Sept. 13, 1999). As the Commission is aware, the Ohio Public Utilities Commission requests the authority to: (1) enforce current number allocation standards; (2) order the return of unused, improperly used, reserved and/or protected NXX codes (and/or thousand blocks, if number pooling is implemented); (3) order efficient number use practices within NXX codes; (4) investigate and order additional rationing measures; and (5) require number pooling where and when the state determines it to be appropriate.

only operate to the detriment of carriers, even if these policies are only temporary.<sup>6</sup> By its very nature, permitting state regulators to experiment with “interim” conservation measures in the absence of centralized standards will be a chaotic and labor-intensive process. What is worse, such experimentation promises to be wasted effort, since the measures the state regulators adopt will almost certainly be modified or preempted by the Commission within the coming year.<sup>7</sup> Unless the Commission intends to delegate substantial administrative responsibility to the states and let their individualized conservation measures stand – a result which Omnipoint strongly opposes – the number of conservation measures that the states initiate during this interim period will likely have little effect before they are preempted or modified, and will therefore be of little value.<sup>8</sup> Moreover, Omnipoint agrees with CTIA and USTA that permitting the states to adopt their own conservation measures now may compromise or interfere with the Commission’s own long-term numbering policies.<sup>9</sup>

None of this activity will be cost free to carriers and their customers. The Commission’s recent state delegations will cost carriers such as Omnipoint a great deal of amount of money, manpower, time, and effort as they struggle to cope and comply with the results of multiple, simultaneous state proceedings. Even at this early stage, Omnipoint is already straining to respond to the various rulemakings, NXX code utilization reports, information requests and conservation proposals being issued by the

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<sup>6</sup> Such state-by-state experimentation will cause particularly serious compliance problems for wireless carriers such as Omnipoint, since they generally serve multi-state licensed areas. See Omnipoint Comments in CC Docket 99-200, at 3.

<sup>7</sup> Accord, MCI Comments at 4-6.

<sup>8</sup> Accord, MCI WorldCom Comments at 5-7.

<sup>9</sup> See CTIA Comments at 5 and USTA Comments at 3.

newly empowered state regulators. This places a considerable strain on Omnipoint's limited resources, and diverts these resources from Omnipoint's public service goals to the frustrating tasks of state-by-state regulatory compliance. While the Commission clearly recognizes this problem, and has voiced its "concern" in some decisions that the states may "strain the capacities" of many carriers by establishing "multiple, disparate number conservation regimes," it is apparent that the Commission has decided to brush these problems off with unenforceable blandishments (such as "encouraging" the states to coordinate efforts and minimize compliance burdens).<sup>10</sup> Omnipoint finds this overly simplistic and naïve, and therefore unacceptable.

Omnipoint also wishes to stress that evidence is already gathering that the states that have received additional numbering authority are not coordinating their efforts and are not taking steps to minimize burdens on carriers. Some states even show signs of testing or stretching the limits of their new jurisdiction. For example, the Florida Public Service Commission recently issued a data request to all carriers requesting that they report their utilization data at the 1000-block level – even though the Commission has made very clear that only carriers capable of participating in local number portability ("LNP") may be required to participate in state number pooling trials.<sup>11</sup>

Based on the comments in this and related proceedings, it should be clear to the Commission that continuing to grant additional numbering authority to state regulators,

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<sup>10</sup> See, e.g., In the Matter of Florida Public Service Commission Petition to Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, CC Dkt. No. 96-98, NSD File No. L-99-33, Order, at ¶¶ 12-13, ¶ 18 (Sept. 15, 1999).

<sup>11</sup> See CTIA Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability, Memorandum Order and Opinion, 14 FCC Rcd 3092 (1999).

such as the NHPUC, will only serve to waste more industry effort and create further uncertainty, without drawing a commensurate benefit for consumers, carriers, the states, or the North American Numbering Plan (“NANP”). Omnipoint accordingly joins AT&T, CTIA, MCI WorldCom, PCIA, SBC and USTA in their continuing opposition to granting states, such as New Hampshire, any additional numbering authority prior to the release of national rules and standards, and urges the Commission to reconsider the direction taken in its recent decisions.

## **II. The Commission Must Continue to Ensure That Number Pooling Trials Are Limited to LNP-Capable Carriers**

For the reasons discussed above, Omnipoint believes that permitting states to conduct piecemeal “trials” of mandatory number pooling prior to the adoption of national standards is a bad policy, which will impose heavy burdens on carriers and complicate the adoption of nationwide policies at a later date.<sup>12</sup> However, Omnipoint recognizes that barring reconsideration of its recent actions, the Commission may grant the NHPUC much the same numbering authority that it has previously delegated to the other states.<sup>13</sup> In the face of this reality, Omnipoint therefore agrees with CTIA and PCIA that, if the Commission grants the NHPUC the authority to conduct mandatory number pooling trials, it should continue to specify that the NHPUC’s authority to conduct number pooling trials is limited to LNP-capable carriers.<sup>14</sup> This limitation is important since the NHPUC Petition contains little detail regarding the scope of its proposed number pooling

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<sup>12</sup> See SBC Comments at 2; PCIA Comments at 2-3; CTIA Comments at 3-5.

<sup>13</sup> In each of the other state delegation decisions, the Commission has granted state regulators the ability to implement mandatory number pooling trials, adopt “interim” number assignment standards, and assume enforcement and auditing powers over carriers. Accord, AT&T Comments at 2; MCI WorldCom Comments at 2-3; USTA Comments at 2.

<sup>14</sup> See CTIA Comments at 5-6; PCIA Comments at 7-10.

trials and does not clearly state that mandatory thousand-block number pooling exempts wireless carriers.<sup>15</sup>

To prevent the states from overstepping their delegated numbering authority, the Commission needs to establish clear boundaries. As demonstrated by the recent information requests by the Florida Public Service Commission, which are discussed above, some state regulators may be disregarding the Commission's recent forbearance ruling exempting wireless carriers from LNP in the top 100 Metropolitan Statistical Areas until the year 2002.<sup>16</sup> Omnipoint and other wireless carriers do not wish to be trapped between the states and the Commission in avoidable quarrels over the scope of the states' numbering authority, and do not wish to become embroiled in pointless fights with the states over matters that should already be settled (such as the participation of wireless carriers in mandatory number pooling trials). As CTIA correctly indicates, "local" number portability requirements that require the participation of wireless carriers would affect the wireless industry on a national scale, and could prejudice later efforts to develop national, uniform standards.<sup>17</sup> To prevent such time-wasting, costly and inefficient results, Omnipoint strongly encourages the Commission to clarify this uncertainty in the event it delegates numbering pooling authority to the NHPUC.

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<sup>15</sup> CTIA points out that the NHPUC Petition's reference to "LNP-compliant" carriers may be synonymous with "LNP-capable" carriers, but correctly contends that if this is not what the NHPUC intends, then it is necessary for the Commission to reaffirm its prior exemption of wireless carriers from number pooling trials. See CTIA Comments at 6.

<sup>16</sup> See CTIA Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability, Memorandum Order and Opinion, 14 FCC Rcd 3092 (1999).

<sup>17</sup> See CTIA Comments at 6.

Likewise, Omnipoint strongly encourages the Commission to deny the NHPUC's requests for authority to implement unassigned number porting ("UNP"), to "revise rationing procedures . . . without industry consensus," to establish interim utilization reporting and forecasting requirements, to enforce number assignment standards and to audit numbering resources, and to establish fill rates for growth codes. Omnipoint agrees with USTA, Level 3 Communications, Inc. ("Level 3") and MediaOne Group ("MediaOne") that the NHPUC has not justified the need for these powers.<sup>18</sup> Omnipoint agrees with Level 3 and MediaOne that it is far too premature to implement UNP.<sup>19</sup> Omnipoint further agrees with Level 3 that in the interest of uniformity, consistency and efficiency, the NANPA should continue to be the party responsible for determining reporting requirements, for determining violations of numbering assignment standards, for taking enforcement actions, and for reclaiming numbering resources from carriers, rather than individual state regulators.<sup>20</sup>

### **III. The Commission Should Ensure That New Hampshire Continues to Allocate Number Resources**

The Commission should explicitly provide that if it grants additional numbering authority to the NHPUC, the state will continue to allocate numbering resources to carriers as they are needed, and will not resort to arbitrary "freezes" while it considers, implements, or administers its conservation measures. Omnipoint is troubled by the statement in the Petition that the NHPUC wishes to preserve New Hampshire's single,

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<sup>18</sup> See USTA Comments at 5-9; Level 3 Comments at 5-12; MediaOne Comments at 2-5.

<sup>19</sup> See Level 3 Comments at 5-6 and MediaOne Comments at 2.

<sup>20</sup> See Level 3 Comments at 11. As Level 3 correctly points out, subjecting carriers to numerous state procedures, standards and penalties when taking such enforcement actions will be highly inefficient, will delay enforcement, and will result in inconsistent policies. Id.



traditional 603 area code as long as possible, and prevent the “disruption” and “costs” of an NPA split or overlay.<sup>21</sup> This apparent political bias against new NPAs is apparent in Governor Shaheen’s testimony before the Commission that “New Hampshire has had one area code since the inception of the [NANP],” and that she supports the NHPUC’s proposals because they would permit the state to “conserve numbers and preserve New Hampshire’s single area code.”<sup>22</sup> Omnipoint is concerned that if New Hampshire’s overarching goal is to preserve its single area code as long as possible and at all costs, the NHPUC may prevent carriers from drawing sufficient numbers from the state’s shrinking pool of numbering resources in the 603 area code and thereby preclude their ability to serve new customers. Omnipoint agrees with MediaOne that such results would directly prejudice non-incumbent carriers, and further agrees that the NHPUC should expressly be prohibited from adopting conservation measures that adversely affect competition.<sup>23</sup>

Finally, Omnipoint also requests that if the Commission grants additional numbering authority to the NHPUC, it should specify that the NHPUC must ensure that wireless providers must continue to have access to growth codes and numbering resources even if they are unable and not required to participate in the state-administered number pooling trials. Omnipoint is concerned that state regulators, such as the NHPUC, may be inclined to “freeze” the allocation of additional numbering resources to non-participants, possibly as part of a policy of forcing all carriers to work within the confines of their allocated thousand number blocks as an artificial means of slowing NPA exhaust. Such a policy would directly discriminate against wireless providers, which employ

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<sup>21</sup> See NHPUC Petition at 2, 13-14.

<sup>22</sup> See Written Testimony of Governor Shaheen, dated October 5, 1999.

fewer blocks of numbering resources to offer service due to their larger service area, and which – as a consequence of being efficient users of numbering resources – would therefore have fewer assigned numbers with which to serve new customers in the event of such a freeze.

#### **IV. Conclusion**

For the foregoing reasons, Omnipoint encourages the Commission to reject the NHPUC's petition, and to reconsider its policy of granting state regulators additional numbering authority prior to issuing uniform, national guidelines. Alternatively, if the Commission grants the NHPUC additional numbering authority, Omnipoint requests that the Commission clarify that the states may not force the participation of wireless carriers in mandatory number pooling trials, and ensure that the states do not "freeze" or otherwise withhold the allocation of numbers to carriers that need them for providing essential communications service to the public.

Respectfully submitted,



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October 15, 1999

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<sup>23</sup> See MediaOne Comments at 6-7.

## CERTIFICATE OF SERVICE

I, Kenneth T. Sigman, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Jackson & Dickens and that a copy of the foregoing **"Reply Comments of Omnipoint Communications, Inc."** was served this 15th day of October, 1999, by hand delivery or by first class mail as indicated, to the persons listed below.

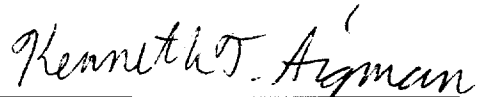
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